IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 152 OF 2000

Shri Sushant T. Karwarkar,
c/o Prince Bakery,
Ward No.3,
Headland, Sada,
Mormugao, Goa. ... Petitioner

versus

1. Mormugao Port Trust,
through its Chairman,
having office at Mormugao
Harbour, Mormugao, Goa.

2. Chief Manager,
Cargo Handling,
Labour Department,
Mormugao Port Trust,
Mormugao, Goa. ... Respondents

Mr. S. S. Kantak, with Ms. R. Chodankar, Advocates for the Petitioner.

Mr. V. B. Nadkarni, Senior Advocate with Mr. Y. V. Nadkarni, Advocate for the Respondent No.1.

CORAM : R. M. S. KHANDEPARKAR &
N. A. BRITTO, JJ.

DATE : 3RD MARCH, 2006.

JUDGMENT(Per N. A. BRITTO, J.)

The petitioner, in this petition filed in a representative capacity on behalf of himself and other 59 persons, as per list annexed, is spousing their cause to be appointed as gangworkers on compassionate grounds based on a Resolution No.1395 dated 24-2-1998, of the Mormugao Dock Labour Board(MDLB, for short) relevant portion of which reads as follows:-

> "Further resolved to appoint the dependants of the registered workers who were compulsorily removed from the services of the Board, on attaining the age of 45/50 years(to keep the Board alive on account of surplus labour force in the year 1982) on the resultant vacancies of registered workers subject to fulfilment of required conditions of the Recruitment Rules".

2. The petitioner/s are the sons of their fathers who on or about 19-5-1982 were declared surplus and

retired at premature age of 45/50 years as against the retirement age of 58 years, with all consequential retirement benefits.

3. The case of the petitioner/s is that the Chairman of the MDLB, had promised their fathers that their dependants would be appointed on compassionate grounds, at least one member of their family, as gangworkers/vinchman as and when the work load of the MDLB increased and in the light of the representations made from time to time the said MDLB had passed the said Resolution. There is no dispute that many of the petitioner/s on or about 13-4-1998 were called for interviews to be appointed on compassionate grounds as gangworkers and indeed many of them underwent physical tests and interviews. They were called for the said interviews/tests on the assumption that as on 31-5-1998 a number of gangworkers in the employment of the said MDLB were to retire and the said interviews were held with a view to fill in the anticipated vacancies. It is stated on behalf of the respondent-M.P.T. that it has not been possible to trace from their records the select list then prepared by the Committee of the MDLB. There is no

dispute that although many of the petitioner/s were called for the said interviews to be appointed as gangworkers on compassionate grounds none of them were appointed because the expected vacancies did not arise since by then the age of superannuation of gangworkers was extended from 58 to 60 years. The petitioner/s has filed the present petition after the respondent/M.P.T. advertised 100 vacancies on or about 11-3-2000. The petitioner/s have sought the following reliefs:-

1. For a writ of mandamus or any other writ directing the respondents to change the recruitment rules so as to incorporate the resolution no. 1395 and thereby appoint the said petitioner/s.

2. For a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction directing the respondents to give effect to the Resolution bearing No.1395 and appoint the petitioner/s to 60 posts of gangworkers, out of 89 posts advertised in general category in terms of advertisement dated 11-3-2000.

3. For a writ of certiorari or a writ/direction and order in the nature of certiorari quashing the second selection of the year 2000 and at the same time the writ of mandamus directing the respondents to restore and give effect to the selection list of April, 1998.

4. For appropriate orders directing the respondents not to make appointments for 60 posts of gangworkers from the general category pending hearing and final disposal of this petition.

4. A Division Bench of this Court on 6-6-2000 by way of interim relief to the petitioner/s directed the respondent-M.P.T. to consider the case of the petitioner/s for the appointment. It appears that many of the petitioner/s appeared for the interview for the post of gangworkers and indeed 12 of the petitioner/s who had fulfilled the criteria as per the said advertisement dated 11-3-2000 were selected and appointed on different dates, as per the list furnished by the respondent-M.P.T. as Exh.R4 to their affidavit in reply, and, inspite of that the prayer (3) as above

remains without being amended. The urgency shown by the petitioner/s for hearing of this petition is another advertisement dated 20-12-2005 by which the respondent-M.P.T. has invited applications to fill in 36 posts of gangworkers and the applications for the same were to be submitted by 2-1-2006. Prior to the said advertisement dated 20-12-2005 the petitioner/s had not at all shown urgency for the hearing of this petition.

5. Although this petition was ordered to be heard along with Writ Petition No.261/1999 by virtue of the said Order of the Division Bench dated 6-6-2000, since then Writ Petition No.261/1999 has been disposed of by this Court by Judgment dated 20-9-2004 reported in (2004(2) GLT 549).

6. It is the matter of common knowledge and now a part of history that the dock work at Mormugao Port Trust was governed by a Scheme known as "Mormugao Dock Workers (Regulation) Scheme, 1965 made by the Central Government pursuant to the Dock Workers(Regulation of Employment) Act, 1948 and the employment of dock workers was being

administered under the said Scheme by the MDLB which was established in terms of Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948. In terms of the said Scheme and as part of the administration of the said Scheme the conditions of service, recruitment and appointment of staff/workers, etc. were done by the said MDLB and it is under the said Scheme that the fathers of the petitioner/s were employed by the said MDLB and then retired as surplus by the said MDLB pursuant to its Resolution dated 17-3-1982 with consequential retirement benefits.

7. Parliament then enacted what is known as the Dock Workers(Regulation of Employment)(Inapplicability of Major Ports) Act, 1997(Act, for short) which gave powers to the Central Government to direct the provisions of the Dock Workers (Regulation of Employment) Act, 1948 to cease to have effect in relation to any major ports. Indeed Section 3 of the Act provided that the Central Government, may, after settlement is arrived at between the MDLB of any major port, its workmen and the management of that major port in accordance with the provisions of the Industrial Disputes Act, 1947, direct by

Notification in the Official Gazette that the provisions of the Dock Workers(Regulation of Employment) Act, 1948 shall cease to have effect in relation to the major ports with effect from the date specified in the Notification. There is no dispute that pursuant to Section 3 of the Act and as contemplated therein a settlement dated 4-2-1998 was arrived at and in terms thereof and by virtue of Notification dated 17-3-1998 and w.e.f. 31-3-1998 the said MDLB came to be merged as the Xth Department known as "Cargo Handling Labour Department of the respondent-M.P.T. It may be stated that this is the correct position as to how the MDLB came to be merged with the respondent-M.P.T. though the pleadings do not show this position and thus leave much to be desired.

8. Section 2(b) of the Act stipulates that Board will have the same meaning as in the Major Port Trust Act, 1963. Section 2(c) of the Act defines "Dock Labour Board" to mean a Dock Labour Board established under Section 5-A of the Dock Workers (Regulation of Employment) Act, 1948. Section 2(d) defines "Major Port" to have the same meaning as in the Indian Ports Act, 1908.

9. Section 4 of the Act deals with the transfer of assets and liabilities of the Dock Labour Board, etc. to the Board i.e. the respondent-M.P.T. Section 4 of the Act, inter alia, provides that on the appointed day, (in this case from 31-3-1998), in relation to a major port -

> (a) all property, assets and funds vested in the Dock Labour Board immediately before such day, shall vests in the Board;
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> (b) all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done by, with or for the Dock Labour Board immediately before such day, for or in connection with the purposes of the Dock Labour Board, shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Board;

10. The contention of the petitioner/s in the petition and now urged on their behalf by Mr. Kantak, the learned Counsel for the petitioner/s is that by virtue of the said Resolution of the MDLB an obligation was cast on the respondent-M.P.T. to give compassionate

appointment to the petitioner/s to the posts of gangworkers/vinchman. It is contended on behalf of the petitioner/s that the said Resolution No.1395 is still in force and has not been rescinded and therefore, the respondent-M.P.T. is under legal duty to give effect to the said Resolution. The petitioner/s contend that they were legitimately expecting being considered for employment more so in view of the fact that on or about 13-4-1998 they were called for interview and, therefore, the respondent-M.P.T. is now estopped from going back on the said promise and the said Resolution No.1395.

11. On the other hand, the respondent-M.P.T. contends that none of the reliefs sought by the petitioner/s are available to them. Relying on the case of **National Hydroelectric Power Corporation and another** v **Nanak Chand and another** (2004 AIR SCW 6339) the respondent-M.P.T. contends that the appointment on compassionate grounds is not a source of recruitment but merely an exception to the requirement/appointment being made by open invitation of application on merits and that the basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood as the object is to enable the family to get over sudden financial crises. Relying on another decision in the case of **State of Haryana and others** v. **Rani Devi** (AIR 1996 SC 2445) the

respondent-M.P.T. contends that a claim for compassionate appointment cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution of India although such claim is considered as reasonable and permissible on the basis of sudden crises occurring in the family of such employee who has served the State and died while in service and that appointment on compassionate ground cannot be claimed as a matter of right. Referring to yet another decision of the Apex Court in the case of **Life Insurance Corporation of India** v. **Asha Ramchandra Ambekar and another**(1994 (2) SCC 718) the respondent-M.P.T. contends that the High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments.

12. The respondent-M.P.T. has contended that extinct MDLB as well as the respondent-M.P.T. are bound to follow the Central Government orders regarding compassionate appointments, a copy of which has been provided as Exh.R1 to the reply filed and in terms of the said policy of the Central Government as per Order No.14014/6/94-ESIT(D) dated 9-10-1998 the said scheme of Central Government for compassionate appointments is now applicable only to the dependant family member of a Government

Servant who (a) dies while in service; and (b) is retired on medical grounds before attaining the age of 55 years. It is stated that by a Resolution No.857 passed on 17-3-1982 the then MDLB had resolved to extend full benefits as applicable under the voluntary retirement scheme also to the workers whose services were terminated. The respondent-M.P.T. has stated that representations were received from the dependants of the workers who were declared as surplus in the year 1982 for benefit of compassionate appointment and the said representations were considered and it was decided with the approval of the Chairman of M.P.T. that under relevant rules compassionate appointments could not be given to such class of persons and that they could apply to the posts of gangworkers as and when the posts were advertised and those of the petitioner/s who applied for the post of gangworkers in response to the advertisement of 11-3-2000 were called for interview, 12 of them selected and appointed as per the list Annexure 4 to the petition. The respondent-M.P.T. contends that the Resolution of the MDLB taken on 24-2-1998 to provide compassionate appointment to the dependants of the workers who were declared surplus and given the benefit of voluntary retirement was contrary to the scheme framed by the Central Government for compassionate appointment which was applicable both to the MDLB as well as to the respondent-M.P.T. and as such a Resolution cannot create any legal right to be entitled to enforce by

way of writ to this Court inasmuch as no writ could be issued to perform such act which is contrary to law. The respondent-M.P.T. has stated that the Notification referred to in para 8(c) of the petition does not extend to Resolutions and policy decisions and in any event the same being contrary to law cannot create any legal right in favour of the petitioner/s and, therefore, the petition is liable to be dismissed.

13. Section 4(1)(b) of the Act provides that all debts, obligations and liabilities incurred, all contracts entered into and all matters and things engaged to be done, with or for the Dock Labour Board immediately before such day, for or in connection with the purposes of the Dock Labour Board, shall be deemed to have been incurred, entered into and engaged to be done by, with or for the Board(i.e. M.P.T.). The contention of the petitioner/s is that the said Resolution is an obligation incurred by the MDLB which the respondent-M.P.T. is bound to follow. In our view this contention is misplaced. The Act does not define the expression obligation which appears in Clause(b) of sub-sec.(1) of Section 4 of the Act. The expression "obligation" as per Black's Law Dictionary is a generic word derived from the latin substantive "obligatio" having many wide and varied meanings, according to the context in which it is used. That which a person is bound to do or forbear; any duty imposed by law, promise, contract,

relations of society, courtesy, kindness etc. Law or duty binding parties to perform their agreement. An undertaking to perform. That which constitutes a legal or moral duty and which renders a person liable to coercion and punishment for neglecting it, etc. Obligation is understood as a legal tie, which imposes upon a determinate person or persons, the necessity of doing, or abstaining from doing, a definite act or acts. The said Resolution No.1395 was passed by the MDLB probably on account of persistent efforts made either on behalf of the petitioner/s or their Union and was taken by the MDLB as an administrative or policy decision. There was no contract either between the Union or the petitioner/s. There was no agreement or contract between the petitioner/s and the MDLB when the latter passed the said Resolution so as to give compassionate appointments to the dependants of the gangworkers who were declared surplus. It is to be noted that the said Resolution was also subject to fulfilment of required conditions of the Recruitment Rules and certainly it cannot be disputed on behalf of the petitioner/s that those of them who satisfied the required conditions were selected and have already been appointed. In our view, the said Resolution cannot be construed as an obligation which the MDLB incurred and was required to perform as an obligation. It was merely an administrative or policy decision taken by the MDLB to the effect that the dependants of those who were declared as surplus would be employed

subject to fulfilment of required conditions of the Recruitment Rules. Such a Resolution created no obligation in favour of the petitioner/s to be performed by the MDLB. The respondent-M.P.T. as successor to MDLB was bound to change it and it has been rightly changed by the respondent-MDLB as stated in para 12 of the reply filed regarding which no dispute has been raised by the petitioner/s nor a challenge laid to the decision of the Chairman of M.P.T. not to follow the same being contrary to the scheme of compassionate appointment issued by the Central Government as per Order dated 9-10-1998. No one can have a vested right in a policy decision which can be changed at any time with the change in the policy of the Government or a statutory organisation.

14. The said Resolution to provide compassionate employment to the dependants of gangworkers who were declared as surplus, again it may be stated at the cost of repetition, was subject to the said dependants fulfilling the required conditions of the Recruitment Rules and in such a situation, in our view, the petitioner/s cannot compel the respondent-M.P.T. on the principle of promissory estoppel to follow the said resolution. In order to invoke the principle of promissory estoppel it is necessary that the Government or any statutory authority should make a promise knowing or intending that it would be acted upon by the promisee or in fact the

promisee acting in reliance on it has altered its position and in such a situation the Government or the statutory authority would be held bound by the promise and the promise would be enforceable as against the Government at the instance of the promisee, notwithstanding that there is no consideration for the promise and the promise is not recorded in the form of a formal contract. It may be stated that the MDLB upon persistent requests made on behalf of the petitioner/s had taken the said Resolution and later on had called many of them for the interviews to fill in certain vacancies which ultimately did not arise. At no stage have the petitioner/s altered their position pursuant to the said Resolution and/or after having been called for the said interview and in such a situation the doctrine of promissory estoppel based on the said Resolution would not be applicable to the case of the petitioner/s. In our view, the reliance placed by the learned Counsel Mr. Kantak on **State of Punjab** v. **Nestle India Ltd. and another** ((2004) 6 SCC 465) is misplaced. The said decision sets out in detail as to what are the strengths and weaknesses of the said doctrine of promissory estoppel.

15. In our view, the petitioner/s would also not be entitled to insist that the said Resolution be given effect to on the doctrine of legitimate expectation. The principles underlying the doctrine of legitimate

expectation has been set out in the case of **J. P. Bansal** v. **State of Rajasthan and another**(2003(2) L.L.N.405) relied upon by Mr. Kantak. The Apex Court has stated that the basic principles in this branch relating to "legitimate expectation" were enunciated by Lord Diplock in Council of Civil Service Unions and others(1985 A.C. 374) commonly known as CCSU case. It was observed in that case that for a legitimate expectation to arise, the decisions of the administrative authority must affect the person by depriving him of some benefit or advantage which either -

(i) he had in the past been permitted by the decision maker to enjoy and which he can legitimately expect to be permitted to continue to do until there has been communicated to him some rational grounds for withdrawing it on which he has been given an opportunity to comment; or

(ii) he has received assurance from the decision maker that they will not be withdrawn without giving him first an opportunity of advancing reasons for contending that they should not be withdrawn.

16. The Apex Court in relation to the said doctrine, further stated that the procedural part of it relates to a representation that a hearing or

other appropriate procedure will be afforded before the decision is made. The substantive part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced. In the above case, Lord Fraser accepted that the civil servants had a legitimate expectation that they would be consulted before their trade union membership was withdrawn because prior consultation in the past was the standard practice whenever conditions of service were significantly altered. Lord Diplock went a little further, when he said that they had a legitimate expectation that they would continue to enjoy the benefits of the trade union membership, the interest in regard to which was protectable. An expectation could be based on an express promise or representation or by established past action or settled conduct. The representation must be clear and unambiguous. It could be a representation to the individual or generally to class of persons. As already noted all that the MDLB had done is that it had passed the said Resolution and at one stage had called many of the petitioner/s for interviews to fill in certain vacancies which ultimately did not arise at all. If the respondent-M.P.T. has now decided not to follow the said Resolution/ decisions of the MDLB it is because it is contrary to Central Government instructions governing compassionate appointments and therefore in our

view, the doctrine of legitimate expectation could not be invoked and more so because the petitioner/s had at no time taken benefit or advantage pursuant to the said Resolution which they were being deprived of.

17. The Apex Court in the case of **Commissioner of Public Instructions and others** v. **K. R. Vishwanath**(2005 AIR SCW 4102) has referred to a number of earlier decided cases and has stated that public service appointments should be made strictly on the basis of open invitation of application and merit. The appointment on compassionate ground is not a source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

18. In our view, the petition and the reliefs sought appear to be wholly misconceived.

19. Lastly, it must be stated that the Resolution No.1395 taken on 24-2-1998, as the text indicates, was to appoint the petitioner/s being dependants of the said gangworkers who were declared surplus subject to fulfilment of required conditions of the Recruitment Rules. As already stated those of the petitioner/s who were qualified as per the Recruitment Rules and were found fit have been selected and appointed. The petitioner/s cannot claim compassionate appointment only because they were the dependants of the said gangworkers who were declared surplus. That would be misreading the said Resolution No.1329. The said Resolution, in the manner sought to be interpreted on behalf of the petitioner/s that they would be entitled to be appointed on compassionate grounds because their fathers were declared surplus would be against the instructions issued by the Central Government as stated on behalf of the respondent-M.P.T. and in the light of that the petitioner/s would not be entitled to enforce such a Resolution by way of a writ petition. The petitioner/s have no right to be appointed or considered for compassionate grounds only because they were the dependants of the said gangworkers who were declared as surplus. The Apex Court in the case of **Director of Settlements, A.P. and others** v. **M. R. Apparao and another** (AIR 2002 SC 1598) has stated that in order to obtain a writ or order in the nature of mandamus, the applicant has to satisfy that he has a legal right to the

performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. A duty that may be enjoined by mandamus may be one imposed by the Constitution, a statute, common law or by rules or orders having the force of law. When the aforesaid principles are applied to the case of the petitioner/s we find that the petitioner/s have no legal right to insist that the respondent-M.P.T. changes its Rules in consonance with the said Resolution with a view to provide employment to them only because they have been the sons of their fathers who were declared surplus and given the benefit of voluntary retirement pursuant to Resolution dated 17-3-1982. Framing of Rules is the prerogative of the respondent-M.P.T. and the petitioner/s have no right to insist that the respondent-M.P.T. changes them in any particular manner. In our view, the petition is devoid of any merits and, therefore, the same is hereby dismissed. Rule discharged.

R. M. S. KHANDEPARKAR,J.

N. A. BRITTO, J.

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